IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 32205 of 2005(H)

AGAINST THE ORDER IN EP 36 2003 IN
OS.438/1998 of PRL.M.C., KOLLAM
.....

PETITIONER:

ABDUL MAJEED @ FRANCIS,
HIDAYATH MANZIL, KERALAPURAM,
CHANDANATHOPPU P.O., KOLLAM.

BY ADV. SRI.PREMCHAND R.NAIR

RESPONDENTS:
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1. THE STATE BANK OF TRAVANCORE,
KIZAKKEKALLADA BRANCH, KOLLAM,
REPRESENTED BY ITS BRANCH MANAGER.

2. THE DISTRICT COLLECTOR,
KOLLAM.

R1 BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
R2 BY ADV. SHYSON P. MANGUZHA, GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 32205 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE LETTER DT.31.11.96 ISSUED BY THE 1ST RESONDENT TO THE MANAGING DIRECTOR, KERALA CERAMIC LID.

EXT.P2 : TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE BAR COUNCIL OF KERALA DT.29.09.03.

EXT.P3 : TRUE COPY OF THE PETITIO IP NO.15 OF 2003, FILED BEFORE THE SUB COURT KOLLAM DT.20.02.03.

EXT.P4 : TRUE COPY OF THE ORDER OF THE WRIT PETITION WP(C) NO.18094 OF 2005 DT.16.06.2005.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 32205 OF 2005

Dated this the 1st day of August, 2007

JUDGMENT

Under the guise of challenging the order refusing to recall warrant what the petitioner virtually seeks is to set aside the earlier order of the execution court which finds that the petitioner has means and that he is willfully neglecting to pay. The submission of Mr.Sathish Ninan, Standing Counsel for the petitioner that the order of arrest was passed on the basis of an enquiry conducted pursuant to a notice which was issued to the petitioner is not disputed. Counsel submitted that in that enquiry on behalf of the decree holder Bank, PW1 was examined and that the petitioner did not adduce any counter evidence at all. In such a situation it will not be proper to blame the execution court for having refused to recall warrant, since going by the principles laid down in **Kuppu Swamy v. P.G.Menon** [**1992 (2) KLT 203**] case, the decree holder has only to adduce formal evidence.

2. The learned counsel for the petitioner submits that if an opportunity is given, the petitioner will be prepared to adduce counter evidence. According to the learned counsel, in view of the order passed by this court in proceedings to which the petitioner and his employer were parties, it is likely that the petitioner will get considerable

monetary benefits from his employer in the near future and it may be possible even to liquidate the liability in a lump.

Having regard to the above submission, I am of the view that a short time can be given to the petitioner against the orders pursuant to the order of warrant presently passed, but only on conditions. It is assumed that the decree debt will be around Rs.1 lakh. The petitioner is directed to pay a sum of Rs.25,000/- to the respondent Bank towards the decree debt within one month from today. If payment is made and evidence in that regard is produced before the execution court, the execution court will re-post the EP for adducal of counter evidence by the petitioner on the question of his liability to arrest and detention whether the petitioner has means to pay and yet willfully neglected to pay the decree debt. The court below will take a fresh decision on the issue on the basis of the entire evidence which comes on record in the EP. But it is made clear that, if payment as directed above is not made, the order of the execution court finding that the petitioner is liable to be arrested and the consequent order directing issuance of warrant for arrest will stand confirmed and the Writ Petition will stand dismissed.

PIUS C. KURIAKOSE, JUDGE

btt